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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,135	02/04/2002	Robb Edward Bennett	12929.1070US01	4795
7590	12/12/2003		EXAMINER	
MERCHANT & GOULD P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			BUI, THACH H	
			ART UNIT	PAPER NUMBER
			3752	
			DATE MAILED: 12/12/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

L.C.

Office Action Summary	Application No.	Applicant(s)
	10/067,135	BENNETT ET AL.
	Examiner	Art Unit
	Thach H Bui	3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-24 is/are allowed.
- 6) Claim(s) 25-31 and 34-37 is/are rejected.
- 7) Claim(s) 32 and 33 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4.5</u> .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

1. The preliminary amendment filed November 06, 2003 has been received and entered.

Information Disclosure Statement

2. Applicant's prior art citation filed May 09, 2002 and November 06, 2003 have been received, considered and placed of record.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 34-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 34, "a water shield" is not clearly described.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 28-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 is vague and indefinite because "shielding the flames from the directed water" renders the claim unclear. There are no clear teachings of how to shield the flames from the directed water.

Claim 30 is vague and indefinite because "the shielding step" renders the claim unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 25, 26, 28-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Ditto (U.S. Patent No. 3,565,337).

Ditto teaches a mean for generating a combustible gas flame above a surface of a liquid (i.e. mixing the combustible gas and the supply of liquid), comprising a mean to provide a manifold at least partially disposed within the liquid for discharge of combustible gas having a gas tube (6) to define a gas passage to deliver the combustible gas from a combustible gas source to the manifold, wherein the gas is ignite above the surface of the liquid (see Fig. 1 and 2). The apparatus includes a mean

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to provide a liquid tube (3) for delivering a supply of liquid to a liquid outlet defined by the apparatus. Ditto also teaches a water reservoir for collecting the water (1).

Methods follow by apparatus.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ditto in view of Robinson et al. (U.S. Patent No. 4,858,826).

Ditto has all the features of the invention (as mentioned above); however, Ditto failed to teach means for enhancing the combustible gas flame. Robinson et al. teach a mean for enhancing the combustible gas flame i.e. producing colored flames by adding metallic salts to the discharge nozzle (col. 1, lines 41-63). It would have been obvious to one having ordinary skills in the art at the time the invention was made to modify the teachings of Ditto and combined with Robinson et al. to have a mean for generating a combustible gas flame above a surface of a liquid (i.e. mixing the combustible gas and the supply of liquid) having a mean for enhancing the combustible gas flame i.e. producing colored flames by adding metallic salts to the discharge nozzle for decorative and entertaining qualities. Methods follow by apparatus.

Allowable Subject Matter

7. Claims 1-24 are allowed.
8. Claims 32-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claims 34-37 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lin and Pham are cited of general interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thach H Bui whose telephone number is 703-305-0063. The examiner can normally be reached on Monday-Friday, 7:30-4 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 703-308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-

1148.



Thach H. Bui
Patent Examiner, AU3752